

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

A.O. No. 289 of 2004

(Old No. 373/1991)

Date of decision :- 13-7-2006

A.F.R. (Approved for Reporting)

~~Not Approved for reporting~~

Date :- 13-7-2006

Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

First Appeal from Order No.289 of 2004

{Old No.373/1991}

Smt. Bishani Devi
W/o late Sri Trilok Ram
R/o village Guli Gaon
Patti Chitgal, Tehsil Gangolihat
District Pithoragarh Appellant

Versus

Prabhagiya Van Adhikari
East Almora Van Prabhag
Almora Respondent

Sri Rajendra Dobhal learned counsel for the appellant.
Ms. Mamta Bihst learned Standing Counsel for the respondent.

Hon'ble J. C. S. Rawat, J.

1. This first appeal has been filed against the judgment and award dated 15.03.1991 passed by Sri Rakesh Sharma, the then Workmen's Compensation Commissioner, Pithoragarh in W.C. Case No.12/1998 Smt. Bishani Devi Vs. Prabhagiya Van Adhikari, by which the learned Commissioner has dismissed the claim of the appellant.

2. Brief facts of the case are that a claim petition was filed by Smt. Bishani Devi W/o late Sri Trilok Ram for the compensation under the Workmen's Compensation Act alleging therein that her husband (Trilok Ram) was working with the respondent(department) in the month of April 1987. It was further alleged that on 30.04.1987 during the course of employment a tree fell on him in the reserve forest and due to which he sustained serious injuries and he was taken to hospital and he died on 01.05.1987. It was further alleged that the salary of the deceased was Rs.495/- per month and he was 30 years

of age at the time of the incident. The claimant submitted her representation to the department for compensation, but the department did not pay any heed to the request of the claimant. Thereafter, she filed a claim of Rs.40,000/- before the Workmen's Compensation Act against the respondent-department. The application (claim petition) was contested by the department on the ground that the averments made in the application was not correct. The department had admitted that the deceased sustained the injuries on account of felling of tree, which was far away from the place of working. It was further alleged that the deceased was not working at the time of felling of tree. It was further alleged by the department that the deceased was in the employment of the department till 29.04.1987 and he was getting wages of Rs.10/- per day. The deceased did not sustain the injuries during the course of the employment. It was further alleged that there was no nexus between the cause and the death of the deceased. It was further alleged that the deceased had sustained the injuries due to natural calamity and as such the department was not liable to pay compensation to the claimant. It was further requested by the department that the application filed by the claimant might be rejected.

3. The learned Commissioner framed necessary issues in the case and ultimately, the Commissioner has held that the deceased was in the employment of the department till 29.04.1987 and he was not in the employment at the time of accident and as such the wife of the deceased-claimant was not entitled to get the compensation.

4. Feeling aggrieved by this, the claimant has filed the present appeal before this Court.

5. The question involved in this appeal is that whether the Commissioner was obliged to give a finding on the point that the injuries sustained by the deceased were caused arising out of his employment. Both the parties had adduced the evidence in support of their contentions. The claimant has adduced the evidence of herself as PW1. She also adduced the evidence of two labours i.e Rajendra Ram PW2 and Hoshiyar Ram PW3, who were working with the deceased. The department had also adduced the evidence of the forest guards i.e. Pooran Chand Singh and Thakur Singh. Both the witnesses had stated that the deceased was not working with the department on 30.04.1987. The deceased had been working in the employment of the department till 29.04.1987 and he was not a workman on the date of accident i.e. 30.04.1987. The learned Commissioner had held that the accident did not occur during the course of the employment; as such the respondent-department was not liable to pay the compensation to the wife of the deceased.

6. It was contended on behalf of the claimant-appellant that if the accident had occurred in the course of his employment or the injuries had been sustained by the worker in the accident arising out of and in the course of employment, the employee would be liable to pay compensation. Section 3 of the Workmen's Compensation Act, 1923 provides as under :-

3. Employer's liability for compensation:-

(1) If personal injury is caused to a workman by accident **arising out of and in the course**

of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

7. Perusal of the aforesaid section reveals that provisions of Section 3 are attracted if the injury was caused to a workman by accident arising out of his employment and the injuries were caused in the course of employment. The expression “in the course of his employment” suggests the point of time, i.e. the injury must be caused by accident taking place in the course and during currency of his employment. The term “arising out of his employment” is wide enough to cover a case where there may no direct connection between the injury caused by accident and the employment of the workman but there may be circumstances attending employment which would establish that a personal injury was received by the workman by an accident arising out of his employment. For example, if a railway employee meets with an accident while traveling back from his place of duty to his residence by a local train using a free pass given by his employer, can the accident be treated to have been taken place in the course of employment within the purview of section 3. It may be held that the accident occurred and in the course of employment and the entitlement to claim may be upheld.

8. In the instant case, the claimant had proved a certificate issued by Pooran Chand Pant, Forest Daroga, Gangolihat, who had certified that the deceased was working in the reserve forest compartment no.2 and his death occurred by felling of tree during the course of the work at 8AM and due to which he sustained the injuries.

This certificate further fortifies that the workers were working in the employment of the department. DW1 Thakur Singh, Forest Guard had tried to develop a case that the deceased was working in the department till 29.04.1987 and he was asked not to come on the job as the work had been completed. The department had also produced the copy of the register, in which his presence has not been shown on 30.04.1987. The evidence of Rajendra Ram PW2 and Hoshiyar Ram PW3 reveals that the workers were working there and co-workers Rajendra Ram PW2 and Hoshiyar Ram PW3 had given the un-rebutted statement that they were residing together in the reserve forest in a tent and they have categorically stated that the work was going on. It is also in the evidence that the deceased was not getting the salary on each day. His wife took his salary after 10 to 15 days of the accident. It was categorically stated by PW2 Rajendra Ram that the deceased sustained injuries at 8AM in the morning. Hoshiyar Ram PW3 had stated that the workers had to live in the forest in a tent and they had to work in the whole day as well as in the night. If the deceased was not in the employment on the date of accident why he was staying in the forest area. Learned counsel for the respondent-department relied upon the statement of DW1 Thakur Singh, who had stated in his evidence that the deceased has worked till 29.04.1987. If he sustained serious injuries at 8AM in the morning he would not definitely work on that day.

9. The words “in the course of employment” means, “in the course of the work which the workman is employed to do and which is incidental to it.” The words “arising out of employment” are understood to mean “during the course of the employment, injury has

resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered". In other words there must be a casual relationship between the accident and the employment. The expression "arising out of the employment" is again not confined to the mere nature of the employment. The expression applies to employment as such – to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises 'out of employment'. To put it differently if the accident had occurred on account of a risk, which is an incidental of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act.

10. Literal construction of the phrase "arising out of his employment" conveys the idea that there must be some sort of connection between the employment and the injury caused to a workman due to the accident. But, it is wide enough to cover the case where there may not necessarily be a direct connection of the workman. There may be circumstances tending to show that the workman received personal injury due to the accident that arose during the course of or out of his employment. It would not mean that personal injury only must have resulted from the mere nature of the employment, nor it be limited to cases where the personal injury is referable to duties which the employee has to discharge. The phrase "arising out of the employment" applies to employment as such – to its nature its conditions, by reason of which its workman is

brought within the zone of danger and resultant injury, disease or death. In the context of the claims of the labour for social justice under welfare legislation, the principle is that the employer and the employees are so inter-related and dependant on each other that it is in the interest of each that the other should survive, and it is in the interest of society that both should be kept functioning in harmony with each other. The expression, "arising out of" therefore, requires the existence of casual connection between employment and the accident does not logically necessitate direct or physical connection. It may be of various steps, namely, direct physical, approximate, indirect or incidental. **{See Regional Director, E.S.I. Corporation & another Vs. Francis De Costa & another 1993 Suppl. 4 SCC 100}**

11. Learned Commissioner had not given the finding as to whether the injuries were caused by accident arising out of employment or not. The finding on this point is lacking in the judgment of the learned Commissioner.

12. In the case of **M.S. Varma & Co. Vs. Gangaram Kamta Kevat reported in 1988 Vol.56 F.L.R. 737 (Bombay)**, the workman was working in Manisha building as a workman of the employer upto 6.1.1978. The accident took place on 8.1.1978. The employee's brother was working in the employment of the same employer in the same building on the day of the accident. Both the facts being incontrovertible the inevitable conclusion was that the employer did have a work contract in the Manish building on the day of the accident. It is also true that, on the day in question other workmen of the employer were working in the

building. He sustained the injuries in the same building. The Court observed that it was reasonable to conclude that both of these employees were employees of the same employer and the injured workman met with an accident resulting in total disablement in the course of and arising out of his employment. The compensation was awarded to the injured.

13. In the case in hand, the facts are identical and the inevitable conclusion which can be drawn in this case also that the death of the deceased was caused in the course of employment and arising out of his employment. Applying the principle laid down in the above pronouncement, the claimant is entitled to get the compensation. It is pertinent to mention here that the incident pertains to the year 1987 and it would not be just and proper to remand this case only to give a finding in the matter as to whether the accident occurred arising out of the employment or not. I have already given a finding in this regard if the case is remanded for fresh finding it would be a denial of justice to the claimant after about 18 years. If the case is remanded back to the Commissioner, it would not be just and proper in the interest of justice. So, I proceeded with the matter. Now, I have to consider what was the age of the deceased at the relevant time. It is not disputed that the deceased was 30 years of age at the relevant time. It is also admitted that he was getting wages of Rs.10/- per day or say Rs.300/- per month. According to the relevant factor provided under section 4(a) of the Workmen's Compensation Act {50% of monthly wages of the deceased multiplying by 207.98}, the compensation comes to Rs.31,197/-. In my opinion, the ends of justice will be satisfied if

suitable interest rate is also given on the compensation. The claimant shall also be entitled to get the interest @ 6% per annum from the date of filing the claim petition till the date of payment.

14. The appeal is allowed. The amount of Rs.31,197/- (Rupees thirty one thousand one ninety seven only) is awarded as compensation to the claimant alongwith the interest @ six percent per annum from the date of filing of the claim petition till the date of payment.

(J.C.S. Rawat, J.)

Dated 13.07.2006

LSR